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Maine State Board of Arbitration and Conciliation Annual Report, Fiscal Year 2009

Maine State Board of Arbitration and Conciliation

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STATE BOARD OF ARBITRATION AND CONCILIATION
ANNUAL REPORT
FISCAL YEAR 2009

This report is made pursuant to 26 M.R.S.A. § 931 (2007 and Supp. 2008).

There were several changes in the complement of the Board this year. In September, 2008, Virgil E. Beane of Cumberland Center, Senior Vice President (retired) of Hannaford Brothers Company, who served as an Alternate Employer Representative from 1999 before being appointed Primary Employer Representative in 2001, decided not to seek reappointment. In addition, Alternate Chair Barbara L. Raimondi, Esq., who had served as Alternate Chair since 1999, was appointed Alternate Chair of the Maine Labor Relations Board in September, 2008, and resigned from the Board at that time. Barbara and Virgil have been outstanding Board members and they will be missed by their Board colleagues and by our client community.

On January 7, 2009, Governor Baldacci appointed Rebekah J. Smith, an attorney from Union whose practice is focused on service as a neutral decision-maker, to be an Alternate Chair, replacing Barbara. Also appointed at that time were Harry R. Courtois of Biddeford, Labor Relations Officer (retired) for the City of Bangor and a former Chief of Police in Biddeford, to be the Primary Employer Representative; Clare Hudson Payne, of Holden, an attorney with Eaton Peabody in Bangor who represents public employers, and Don Gerrish, who recently retired after almost 20 years of service as Town Manager in Brunswick, as Alternate Employer Representatives. Harry had served as an Alternate Employer Representative since 2002. On February 5, 2009, the Governor reappointed Employee Representative Robert F. Bourgault, a Labor Consultant from Biddeford. The members and alternate members of the Board serve three-year terms.

The other members of the Board, Chair Shari B. Broder, an attorney from Freeport, and Alternate Chair Peter P. Michaud, Esq., of Cape Elizabeth, whose practices are

concentrated in the area of alternate dispute resolution; Alternate Employee Representatives Chester G. ("Chuck") Hillier of Monmouth, Assistant Negotiator with the Maine State Employees Association; and Shawn C. Keenan, of Bath, General Counsel of the Maine Education Association, continued to serve in their respective capacities throughout the year. The competence of the Board's membership remains high, consisting of able neutrals and partisan members known throughout the Maine labor relations community.

Roger A. Putnam of the Maine Labor Relations Board (MLRB) staff coordinated the Board's activities and served as the primary liaison with the client community. MLRB Executive Director Marc P. Ayotte served as the Board's general administrator and legal advisor.

Activities of the Board. The 21 total cases filed this year compares with 11 total filings in the previous fiscal year. During the last twenty years, the year with the greatest number of filings (57) was FY 1994 and the fewest cases (11) were filed in FY 2008. During that period an average of 30 cases were filed each year.

Grievance arbitration is almost-universally accepted as a means for resolving disputes arising under a bargaining agreement. Despite the best of good faith and honesty of purpose, reasonable people can and often do disagree about the meaning and application of the terms of the collective bargaining agreements they have negotiated. A grievance procedure is the usual mechanism for resolving such disputes. Typically, the objecting party lodges its complaint at the lowest level possible in the employer's organizational structure. If the grievance is denied or the solution offered is unacceptable, the process becomes more formal and it works its way up the management chain of command to the highest level. If the grievance remains unresolved, the negotiated grievance procedure usually provides that the dispute will be resolved in final and binding arbitration by a neutral selected by the parties, often this Board.

In the past several years, the bulk of the Board's case load has involved hearing

and resolving grievance disputes. Of the 21 requests for services received this year, 19 involved grievance arbitration matters. Of the 23 cases filed or carried over into this year, 6 cases were withdrawn by the parties prior to hearing, 1 case was settled and withdrawn after the date of hearing, and 10 cases are pending. The cases filed this year were as follows:

<u>Bargaining Agent</u>	<u>Employer</u>	<u>Issue</u>
AFSCME Council 93 Meals	Androscoggin County S.D.	Taxing of
AFSCME Council 93	Knox County S.D.	Discipline
AFSCME Council 93	Sagadahoc County S.D.	Non-Promotion
AFSCME Council 93	City of South Portland	Temporary Night Foreman Position
AFSCME Council 93	City of South Portland	Job Assignment
IUOE, Local 877 & 4	Mid-Maine Waste Action Corporation	Overtime
Teamsters Local 340	Aroostook County S.D.	Shift Assignment
Teamsters Local 340	City of Augusta	Compensation
Teamsters Local 340 Layoff	Town of Baileyville	Unit Work During
Teamsters Local 340 Time	Cumberland County S.D.	Banking of Holiday
Teamsters Local 340 Pay	Cumberland County S.D.	Bereavement Leave
Teamsters Local 340	Cumberland County S.D.	Termination
Teamsters Local 340	Hancock County	Health Insurance Increase

Teamsters Local 340	Rockland P.D.	Suspension (2)
Teamsters Local 340	Somerset County S.D.	Demotion
Teamsters Local 340	Washington County S.D.	Optometry Benefits
Teamsters Local 340	Westbrook F.D.	Non-Promotion
Teamsters Local 340	Westbrook F.D.	Disciplinary Action
Teamsters Local 340	York County	Admin. Leave Day Pay
Teamsters Local 340	York County	Bumping Rights

Conciliation is a process during which the partisan members of the assigned Board panel, the Employee and Employer Representatives, meet with "their" respective party, assess that party's real needs and concerns in the matter at issue, and help the party to determine the relative strengths and weaknesses of their position. The partisan members then caucus to ascertain whether an agreed-to resolution is possible and, if so, work with the parties in achieving settlement. The Board believes that having parties resolve their dispute through mutual understanding and accord is far preferable to having a solution be imposed by fiat of a third party; accordingly, we attempt to conciliate every case presented to us.

Fact finding is the second of the three statutory dispute resolution procedures in public sector collective bargaining. If the parties are unable to reach accord on their collective bargaining agreement through direct negotiations and mediation, either of them can request fact finding. In that process, the parties present evidence and arguments in support of their respective positions on the unresolved issues. The fact-finding panel may consider a variety of factors such as wages, hours and working conditions for comparable positions in the labor market, the financial ability of the employer, changes in the consumer price index since the last round of negotiations, and the labor market conditions in general. After the close of the record, fact finders issue their recommendations for resolution of the controversy. The report is confidential for 30 days and it remains

confidential if the parties are able to resolve the dispute within that time. If not, the report becomes a public document and may be used by either party to attempt to sway public opinion to mount political pressure for resolution. The Board did not receive any requests for fact-finding services this year; two requests were received last year.

Interest arbitration is procedurally similar to fact finding, except that the arbitrators' award is binding on all issues except for those concerning wages, pensions and insurance. There are few interest arbitration proceedings in Maine in any given year and in some years there are none at all. The Board did not receive any requests for interest arbitration this fiscal year.

Because of its extensive statutory jurisdiction and its tripartite structure, the Board has undertaken some significant special assignments in recent years. This year, the parties in a prohibited practice complaint case filed with the Maine Labor Relations Board agreed to settle their differences by participating in joint labor-management training. The training, conducted by a panel of our Board, helped the parties to better understand their roles and responsibilities in the collective bargaining process.

At the suggestion of the Executive Director of the MLRB, the parties in another prohibited practice complaint case attempted to resolve their dispute through our conciliation process. Despite their good faith participation during a ten-hour marathon conciliation session, the parties were unable to settle their differences; however, the parties did ultimately resolve the matter.

Legislative Developments. One measure affecting the Board was enacted by the Legislature and signed by the Governor this year. As noted in last year's report, the Legislature suspended the Board's authority to set compensation rates for certain forest products harvesting and hauling services (26 M.R.S.A. §§ 1351-1360) from April 8, 2008 to June 1, 2009, in order to allow the Department of the Attorney General to conduct a statewide market power study of the State forest products industry, to examine competition in the industry and to determine what, if any, changes are necessary to ensure

fair competition.

Reviewing the statutory rate determination process, the Attorney General's report noted that we have never received any request for rate determination since the law was enacted in 2003. The report suggested that the reasons for this were: the only landowner covered by the law had reorganized its contracting operations to render the law inapplicable, the cost and likely length of the process, the unavailability of rate information in the industry interfering with meaningful rate setting, and the fear of being labeled a troublemaker in the industry expressed by those who considered filing a request. The report stated that "[s]ome interviewees firmly believe that the very existence of the law has served to discipline the use of market power and improved the situation of harvesters and haulers." The report concluded that, due to the lack of rate information and the absence of actual proceedings under the law, the Attorney General was unable to determine the statute's actual effectiveness. As a consequence of the Attorney General's report as well as in response to the actions taken by the only landowner covered by the law, the Legislature enacted L.D. 1492, An Act To Improve Opportunity in the Maine Woods. Among other provisions, this statute repealed the Board's forestry rate-setting authority.

The Board of Arbitration and Conciliation is pleased with its achievements, particularly with its reputation for fairness in the labor relations community. The Board's mission is to improve the labor-management climate in the public sector by providing high quality, professional services to our client community, helping in the resolution of their disputes.

Dated at Augusta, Maine, this 30th day of June 2009.

Respectfully submitted,

Marc P. Ayotte, Executive Director
Maine Labor Relations Board &
State Board of Arbitration and Conciliation